

*2712*  
No. 13111

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United States  
Court of Appeals  
For the Ninth Circuit.

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IDALIA O. FRATT,

Appellant,

vs.

JOHN R. ROBINSON and JANE DOE ROBINSON,  
Husband and Wife, et al.,

Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
Western District of Washington,  
Northern Division

FILED

NOV 14 1951

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

PAUL P. O'BRIEN  
CLERK



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## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Certificate of Clerk to Record on Appeal.....	43
Complaint .....	4
Designation of Record.....	49
Motion to Dismiss, Defendant W. E. Difford...	29
Motion to Dismiss, Defendants Laura R. McLeod and Loren McLeod.....	32
Motion to Dismiss, Defendants Robinson, etc...	25
Motion of Securities and Exchange Commis- sion for Leave to Participate as Amicus Curiae and Notice of Hearing Thereon.....	35
Names and Addresses of Counsel.....	1
Notice of Appeal.....	42
Order on Motions to Strike, Motions to Make More Definite and Certain, and Motions to Dismiss .....	38
Statement of Points on Which Appellant Will Rely on the Appeal.....	47



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In the District Court of the United States for the  
Western District of Washington, Northern  
Division

No. 2765

IDALIA O. FRATT, a Widow,

Plaintiff,

vs.

JOHN R. ROBINSON and JANE DOE ROBINSON, Husband and Wife; TED R. ROBINSON and JANE DOE ROBINSON, Husband and Wife; LAURA R. McLEOD and JOHN DOE McLEOD, Wife and Husband; J. S. ROBINSON and JANE DOE ROBINSON, Husband and Wife; and A. W. V. FORD and JANE DOE FORD, Husband and Wife, Individually and as Officers and Directors of Robinson Plywood and Timber Company, a Corporation; W. E. DIFFORD and JANE DOE DIFFORD, Husband and Wife; and SAMUEL P. McGHEI and JANE DOE McGHEI, Husband and Wife, Individually and as Agents for the Aforementioned Defendants, and as Agents for the Robinson Plywood and Timber Company; and the ROBINSON PLYWOOD AND TIMBER COMPANY, a Corporation (Formerly Known as the Robinson Manufacturing Company),

Defendants.

## COMPLAINT

Comes now plaintiff above named, and for cause of action against defendants above named, alleges as follows:

That at and during all times hereinafter mentioned, plaintiff was and now is the widow of Charles D. Fratt, residing in King County, State of Washington. That at and during all times hereinafter mentioned, John R. Robinson and Jane Doe Robinson, Ted R. Robinson and Jane Doe Robinson, Laura R. McLeod and John Doe McLeod, J. S. Robinson and Jane Doe Robinson, A. W. V. Ford and Jane Doe Ford, W. E. Difford and Jane Doe Difford, and Samuel P. McGhei and Jane Doe McGhei, respectively, formed marital communities under the laws of the State of Washington, residing in Snohomish or King County, Washington. That at and during all times hereinafter mentioned, said defendants acted for and on behalf of their respective marital communities. That at and during all times hereinafter mentioned, Robinson Plywood and Timber Company was and now is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business in Everett, Washington.

## II.

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum of \$3,000.00.

## III.

That this action arises under the Securities Ex-

change Act of 1934, as amended, Public Law No. 291, 73 Congress N. R. 7263, 40 Stat. 681, U. S. C. Title 15, Section 78a, et seq., as hereinafter more fully set forth. That Section 10 of said Securities Exchange Act of 1934, *inter alia*, provides:

“It shall be unlawful for any person, directly or indirectly, by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national security exchange \* \* \* (b) to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange, or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules, and regulations as the Commission may prescribe as necessary or appropriate in the public interest, all for the protection of investors.”

This action arises further under Rule X-10B-5, promulgated by the Securities and Exchange Commission under the aforesaid Securities Exchange Act of 1934. Rule X-10B-5 provides:

“It shall be unlawful for any person directly or indirectly by the use of any means or instrumentality of interstate commerce, or of the mails, or of any “facility of any national securities exchange, (1) to employ any device, scheme or artifice to defraud, (2) to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the

circumstances under which they were made, not misleading, or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

#### IV.

That the facts giving rise to the cause of action set forth in this Complaint were ascertained by plaintiff subsequent to January, 1949, and could not in the exercise of reasonable diligence been discovered by her prior thereto.

#### V.

That by the use of the mails, telephone, telegraph and other means and instruments of transportation in interstate commerce, the defendants, at the times hereinafter set forth:

- (a) Employed a device, scheme or artifice to defraud the plaintiff;
- (b) Made untrue statements of material facts;
- (c) Omitted to state material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading; and
- (d) Engaged in acts, practices or courses of conduct which operated as a fraud and deceit upon the plaintiff in connection with the purchase and sale of the securities of the Robinson Manufacturing Company (now the Robinson Plywood and Timber Company), as hereinafter set forth.

## VI.

That prior to September, 1945, plaintiff was the holder and owner of 781.25 shares of the common capital stock of defendant corporation out of an authorized and issued common capital stock of 7,500 shares. That the said stock of defendant corporation owned by plaintiff was originally acquired by plaintiff and her deceased husband, Charles D. Fratt, as a marital community, about the year 1901. That plaintiff's husband had interest in the business of defendant corporation for many years, although plaintiff, as an elderly housewife, is inexperienced in business matters and that at no time personally participated in the business operations of defendant corporation.

## VII.

That plaintiff is informed and therefore alleges that at all times herein referred to, defendants, John R. Robinson, Ted R. Robinson, Laura R. McLeod, J. S. Robinson and A. W. V. Ford have been the owners of 5,000 shares of common stock of the defendant corporation, the exact number of shares held by each being unknown to plaintiff. That at all times hereinafter referred to, the Board of Directors of defendant corporation was composed of John R. Robinson, Ted R. Robinson, Laura R. McLeod, J. S. Robinson and A. W. V. Ford, and that at all times hereinafter referred to, the executive officers of the defendant corporation were the following-named defendants in the following-named capacities:

John R. Robinson, President.

Laura R. McLeod, Vice-President.

Ted R. Robinson, Secretary and General Manager.

A. W. V. Ford, Treasurer.

That the defendants named in this paragraph are hereinafter referred to as the "Control Group."

### VIII.

That the members of said Control Group have been in actual control of the company for many years, and have vested the actual management of the company for that period in its President, John R. Robinson, and themselves. That after the death of Charles D. Fratt, husband of the plaintiff, the plaintiff's only source of information concerning the business affairs of the defendant corporation, and the source upon which she relied, was through John R. Robinson, and the members of the Control Group. That because plaintiff's deceased husband for many years was an active participant in the business of defendant corporation and as a result of his close relationship and long personal association with said Control Group and particularly John R. Robinson, the plaintiff placed her complete trust and reliance in said John R. Robinson and the other members of the said Control Group. That John R. Robinson and the members of the Control Group occupied a fiduciary relationship to the plaintiff and other stockholders due to their positions as corporate officers, to the associations as aforementioned and under the provisions of the Securities Ex-

change Act and the regulations promulgated thereunder as aforesaid. The plaintiff had complete trust and confidence that John R. Robinson, the Control Group and the other defendants would care for and manage the said corporation within the limits and powers conferred by law and for the benefit of all the stockholders of said corporation, and further, that they were required to act in utmost good faith and were precluded from taking and receiving any personal advantage over any of the minority stockholders, including this plaintiff, and would make only complete and honest disclosures to them of the affairs of said corporation, and that the said John R. Robinson, the Control Group, and the other defendants were obligated to give the defendant corporation and the stockholders thereof the benefits of any advantages which they might obtain from their fiduciary positions and were precluded from over-reaching and making any private profit for themselves in the discharge of their official and fiduciary duties in connection with said corporation.

## IX.

That at some time prior to September, 1945, the exact time of which is not known to plaintiff, the defendant members of the Control Group and defendant, Samuel P. McGhei, conceived and initiated a fraudulent scheme and conspiracy to defraud plaintiff with the ultimate object of securing for themselves all of the common capital stock of defendant corporation held by plaintiff and the other

minority stockholders. That thereafter, the exact time of which is not known to the plaintiff, defendant, W. E. Difford, joined with the Control Group in said fraudulent plan and conspiracy and thereafter took an active part, as hereinafter related, in the development and execution of the fraudulent plan. That the acquisition of plaintiff's stock as hereinafter related was the initial overt act in the execution of said fraudulent conspiracy. That said fraudulent conspiracy, by reason of the combined and concurring acts of the defendants, culminated in the acquisition by defendants of all of the outstanding common capital stock of plaintiff and other minority stockholders of defendant corporation at a price lower than and grossly disproportionate to the actual value of the minority stock so acquired.

## X.

That, as more specifically hereinafter described, the initial overt act of the fraudulent plan and conspiracy was to acquire the 781.25 shares of stock owned by plaintiff for Fifty Thousand (\$50,000) Dollars, or Sixty-Four (\$64.00) Dollars per share. That thereafter between March 15, 1948, and November 17, 1948, defendant, W. E. Difford, on his own behalf and as agent for all the defendants, secured options, which were subsequently exercised, to purchase all the stock held by the other minority stockholders for \$320.00 per share. That all of the minority stockholders, excepting only plaintiff, heretofore brought an action in the United States District Court for the Eastern District of

Pennsylvania, being Cause No. 10322, against all of the defendants herein named, excepting only Samuel P. McGhei and Jane Doe McGhei, his wife, alleging the same fraudulent plan and conspiracy as herein set forth, and as a result of a compromise of said action, each and all of the other minority stockholders have been paid an additional \$110.00 per share for their stock in defendant corporation. That the total consideration per share realized by all other minority stockholders was \$430.00 per share, or 6.718 times more than the defendants paid to acquire the stock of plaintiff pursuant to the said fraudulent plan and conspiracy.

## XI.

That on or about January 15, 1945, John R. Robinson, acting on his own behalf and as agent for the other defendants, pursuant to the fraudulent plan and conspiracy to defraud plaintiff knowingly and with the intent to deceive and defraud the said plaintiff, made the following fraudulent misrepresentations to the plaintiff:

(a) That the general financial condition of the company was insecure. In accordance with the fraudulent plan and conspiracy, he concealed the fact that the general financial condition of the company was good and its earning prospects excellent.

(b) That the company did not have and would be unable to acquire a reasonably sufficient supply of logs to enable it to maintain profitable operations at its location in Everett, Washington. In

accordance with the fraudulent plan and conspiracy, he concealed the fact that the company had long since abandoned its policy of securing timber from the open market and as a substitute therefor, had adopted a long-range policy of acquiring stock interest in corporations owning timber reserves, thus assuring an ample supply of logs and had either acquired or had entered into preliminary negotiations which would lead to the acquisition of these companies.

(c) That due to the lack of timber reserve and raw materials, the company intended to liquidate and/or move its plant from Everett, Washington, to a site in the State of Oregon, and such a change would be accomplished at a great financial loss to the defendant company. In accordance with the fraudulent plan and conspiracy, he concealed the fact that the company's present and long-range policy of securing interests in corporations holding timber rights did not contemplate a change in the location of the plant at Everett, Washington.

(d) That John R. Robinson and/or other members of the Control Group, knowing that the plaintiff and other minority stockholders did not have any representation on the Board of Directors of the company, nevertheless did not consult or advise the plaintiff and/or other minority stockholders of the company's long-range policy of acquiring timber reserves.

(e) That John R. Robinson and/or members of the Control Group failed to provide and deliberately avoided providing plaintiff with full and

complete information concerning the financial condition and financial prospects of the company.

(f) That John R. Robinson and/or members of the Control Group failed and refused to advise the plaintiff and/or other minority stockholders that the Control Group were dissatisfied with the company's sales outlets of jobbers and commissioned salesmen. That John R. Robinson and the Control Group concealed the fact that they and other "insiders" in the lumber industry knew that the termination of World War II would see a great rise of building and home construction which would occasion a demand for the company's particular products as never theretofore experienced. John R. Robinson and the members of the Control Group further concealed from plaintiff the fact that the Control Group, in conjunction with defendant, W. E. Difford, planned to organize a subsidiary company with interlocking directors, which company would have the exclusive sales rights of the products of the Robinson Manufacturing Company and thus exploit the anticipated demand for company's products and consequent increase in sales. John R. Robinson and other members of the Control Group, knowing that plaintiff did not have any representation on the Board of Directors of company, nevertheless did not consult or advise her that its formation would substantially increase the profits of defendant corporation.

(g) In accordance with the fraudulent plan and conspiracy, John R. Robinson and other members of the Control Group fraudulently concealed the

fact that the earnings of the company were such that dividends were warranted and contemplated. Plaintiff is informed and believes and therefore avers that a dividend was declared and paid shortly after the acquisition of her stock, and further that the declaration and payment of said dividend was withheld pending the acquisition of her stock in accordance with the fraudulent plan and conspiracy.

## XII.

That John R. Robinson and the members of the Control Group knew that plaintiff would not have sold her stock at the grossly inadequate price of Sixty-Four (\$64.00) Dollars per share if she had been aware of the truth with respect of the fraudulent misrepresentations and concealments hereinbefore alleged. To conceal their personal acquisition of plaintiff's stock at a grossly inadequate price, John R. Robinson and the Control Group entered into a fraudulent plan and conspiracy with Samuel P. McGhei, whereby:

(a) Samuel P. McGhei, an employee of defendant company, would endeavor to secure an option to purchase the plaintiff's stock at the lowest possible price.

(b) McGhei, in securing the same, would advise plaintiff that he was acquiring the stock to improve his chances for personal advancement in the company; that he was acting solely for himself; that he was buying the stock with his own money, and that if it became necessary to obtain

funds to exercise the option from outside sources, he would obtain the same from his mother.

(c) McGhei would conceal the fact that he was acting as agent for John R. Robinson and/or the members of the Control Group.

(d) The Control Group would advance the One Thousand (\$1,000.00) Dollars "down" money to McGhei, and that thereafter the Control Group would advance the balance of the money necessary to exercise the option.

(e) McGhei would not invest any of his own capital, would not have any actual interest in the stock acquired by means of the fraudulent scheme, and that John R. Robinson and other members of the Control Group would advance all moneys necessary to effectuate the fraudulent plan and would divide the stock thereby acquired in ratio to the money advanced by each.

### XIII.

That on or about the 10th day of September, 1945, Samuel P. McGhei, acting as agent for the other defendants and in pursuance of said fraudulent plan and conspiracy, made the following false and fraudulent misrepresentations to the plaintiff deliberately, wilfully and knowingly, and with the intent to deceive and defraud the plaintiff:

(a) That he, McGhei, held a minor position in the Robinson Manufacturing Company, and that he desired to purchase the stock of the plaintiff because its acquisition would improve his chances for advancement in the company. McGhei fraudu-

lently concealed the fact that he was purchasing the stock of plaintiff as agent for John R. Robinson and the other defendants of the Control Group.

(b) That McGhei offered Fifty Thousand (\$50,000.00) Dollars for the plaintiff's stock, suggesting that the sale be made via an option, calling for One Thousand (\$1,000.00) Dollars "down" money, the balance of Forty-Nine Thousand (\$49,000.00) Dollars to be paid upon exercise of the option. McGhei suggested that the plaintiff endorse her stock and place the same in escrow with his bank, pending that bank's receipt of McGhei's Forty-Nine Thousand (\$49,000.00) Dollars. McGhei fraudulently concealed that the offer was made pursuant to the fraudulent plan as aforementioned and that the option would be exercised by John R. Robinson and/or the Control Group.

(c) That he, McGhei, had One Thousand (\$1,000.00) Dollars of his own money; that he would pay plaintiff a total of Fifty Thousand (\$50,000.00) Dollars for plaintiff's 781.25 shares of stock; that he would raise the balance of Forty-Nine Thousand (\$49,000.00) Dollars. That, in fact, McGhei's mother never contemplated advancement of the money for the purchase of the stock; that it was never intended that McGhei would own any of the plaintiff's stock, but instead he was merely purchasing it for John R. Robinson and the Control Group.

#### XIV.

That a few days prior to the exercise of the option, McGhei, as agent for John R. Robinson

and the Control Group, contacted the plaintiff and recited that he and his mother had only Forty-Five Thousand (\$45,000.00) Dollars available for the exercise of the option and thereupon, requested plaintiff to reduce the total option consideration from Fifty Thousand (\$50,000.00) Dollars to Forty-Five Thousand (\$45,000.00) Dollars. Neither McGhei nor John R. Robinson, nor any other member of the Control Group, revealed that at this time neither McGhei nor his mother had raised or had agreed to raise Forty-Five Thousand (\$45,000.00) Dollars, and McGhei further concealed that this Forty-Five Thousand (\$45,000.00) Dollar figure was merely a trick to enable John R. Robinson and the other members of the Control Group to obtain the plaintiff's stock for a consideration of Forty-Five Thousand (\$45,000.00) Dollars, or a Five Thousand (\$5,000.00) Dollar reduction from the original option consideration. That nevertheless plaintiff refused to grant the requested reduction.

## XV.

That thereafter and pursuant to the said fraudulent plan and conspiracy, defendant, John R. Robinson, on his own behalf and as agent for the Control Group, by the use of the United States Mails, authorized and directed the First National Bank of Everett, Washington, to write to the National Bank of Commerce, in Seattle, Washington, instructing the latter bank to deduct Forty-Nine Thousand (\$49,000.00) Dollars from the account of the former bank, and to transmit and/or credit

the same to the plaintiff's account, and further instructed said bank to forward the plaintiff's stock, then held by it in escrow pursuant to said option, to the First National Bank of Everett for delivery by it to John R. Robinson.

### XVI.

That plaintiff is informed and believes and therefore avers that upon acquiring the stock of plaintiff as aforesaid, the members of the Control Group then divided the stock between themselves in accordance with their respective financial contributions to the fraudulent plan, scheme and conspiracy as aforementioned.

### XVII.

That plaintiff gave the said option to McGhei and sold her stock upon the exercise thereof in reliance upon the misrepresentations and concealments as aforementioned, and as a result of said fraudulent misrepresentations and concealments of material facts, and that but therefor, plaintiff would not have given said option or sold her stock at the grossly inadequate price specified in said option nor for less than its true value. That by reason of said frauds and concealments, the defendant members of the Control Group violated their fiduciary duty to plaintiff as aforesaid.

### XVIII.

That subsequent to the fraudulent acquisition of the plaintiff's stock as aforesaid, but in pursuit of the same fraudulent plan and conspiracy which

ultimately divested the minority stockholders of their stock in defendant corporation at a grossly inadequate price, said John R. Robinson, the Control Group, and the other defendant conspirators proceeded, in part, as follows:

(a) That Isabella V. Zimmerman, of Everett, Washington, an elderly widow whose husband had been connected with defendant corporation for many years, owned 312½ shares of stock in the defendant corporation. That John R. Robinson on behalf of all defendants, on his own initiative and without invitation from Zimmerman, went to her home and endeavored to induce Zimmerman to sell her stock to him by repeating the misrepresentations and concealments made to plaintiff, as more specifically set forth in Paragraph XI hereof. John R. Robinson made a further fraudulent misrepresentation to her that he had acquired the stock of plaintiff for the sum of Ten Thousand (\$10,000.00) Dollars, and fraudulently concealed the fact that he and the other members of the Control Group had fraudulently acquired the same for a consideration of Fifty Thousand (\$50,000.00) Dollars. John R. Robinson then offered Mrs. Zimmerman Ten Thousand (\$10,000.00) Dollars for her stock, which offer was refused.

(b) That, unable to acquire the Zimmerman stock by the fraudulent misrepresentations and concealments aforementioned, the defendant conspirators then used the same general plan which had been successful in defrauding the plaintiff, that is, Samuel P. McGhei went to the home of Mrs. Zimmerman, on his own initiative and uninvited, and

asked if her stock in defendant corporation were for sale and stated that he "would like to have first chance at it" when she decided to sell, and requested that she sell it to him instead of any of the members of the Control Group. In accordance with the fraudulent plan and conspiracy, McGhei concealed the fact that he was acting as agent for John R. Robinson and the members of the Control Group, and further concealed the fact that he had acted similarly in fraudulently acquiring the stock of the plaintiff. That later McGhei again went to the home of Mrs. Zemmerman and repeated his fraudulent misrepresentations and concealed from her the facts aforesaid.

(c) That late in March or early in April, 1948, defendant, W. E. Difford, acting in accordance with the fraudulent plan and conspiracy and as agent for John R. Robinson and the members of the Control Group, went to the home of Mrs. Zimmerman and fraudulently misrepresented to her that:

(1) John R. Robinson, Ted R. Robinson and Laura R. McLeod were selling out their interests in defendant corporation to a "big company in the East";

(2) He, W. E. Difford, was acting as agent for the "big company in the East" to consummate the transaction;

(3) He was getting options to buy all the outstanding stock of said corporation, and had already obtained options from John R. Robin-

son, Ted R. Robinson, Laura R. McLeod, A. W. V. Ford and J. S. Robinson;

(4) That John R. Robinson, Ted R. Robinson and Laura R. McLeod would sever their connection with said corporation;

(5) That on the same day, Mrs. Zimmerman called the offices of the defendant corporation and talked over the telephone to defendant, Ted R. Robinson, who, in response to her specific questions as to whether he was selling his stock and leaving the company, falsely replied that it was true and that he was selling out and that John R. Robinson was doing likewise. As a result of the aforesaid misrepresentations and concealments, Mrs. Zimmerman gave Difford an option, subsequently exercised, to purchase her 312½ shares of stock for Three Hundred Twenty (\$320.00) Dollars per share, although her stock was then worth a much greater sum per share.

(d) That after March 1, 1948, by use of the United States Mails, telephone and other means and instrumentalities of interstate commerce, and in pursuance of the said fraudulent plan, scheme and conspiracy herein alleged, defendants, W. E. Difford and John R. Robinson, did contact the other minority stockholders of defendant corporation in the Eastern part of the United States and by the use of the same and similar false misrepresentations and concealments did secure options to purchase the stock of defendant corporation held

by them for Three Hundred Twenty (\$320.00) Dollars per share, which option was exercised in accordance with the conspiracy set forth. That these minority stockholders likewise relied on such misrepresentations and concealments in selling their stock for Three Hundred Twenty (\$320.00) Dollars per share, although their stock was then worth a much greater sum per share.

## XIX.

That John R. Robinson and the other members of the Control Group, having acquired the stock of plaintiff and other minority shareholders, amended the Articles of Incorporation of the defendant company, changed the corporate name from "Robinson Manufacturing Company" to "Robinson Plywood and Timber Company" and, further, changed the authorized number of shares from seventy-five hundred (7,500) shares of common capital stock, having a par value of One Hundred Dollars per share, to one and a half million shares of common capital stock, having a par value of One Dollar per share, or an increase of sixty-six (66) for one (1). Thereafter they caused a Registration Statement to be filed with the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1933, wherein it was proposed to offer two hundred seventy-one thousand twenty-five (271,025) shares of said common capital stock of defendant company to the public. The plaintiff avers that of the aforesaid two hundred seventy-

one thousand twenty-five (271,025) shares to be offered to the public, at least two hundred sixteen thousand five hundred forty-six (216,546) shares represented stock of defendant company formerly owned by the plaintiff and other minority stockholders. The aforementioned Registration Statement was withdrawn immediately after all defendants, except Samuel P. McGhei, received notification of a contemplated lawsuit by minority shareholders other than the plaintiff herein.

## XX.

Plaintiff avers that all representations made, acts or things said or done, and all concealments of necessary and material facts and information required to have been disclosed by any one or more of the individual defendants, were in furtherance of the fraudulent plan and scheme and conspiracy into which all of the defendants entered, and were made on behalf of all of the said defendants with intent to deceive and defraud plaintiff.

## XXI.

Plaintiff alleges on information and belief that the true value of the stock sold by her to defendants in reliance upon the misrepresentations and concealments hereinbefore alleged at the time of the sale was Five Hundred (\$500.00) Dollars per share, and at the time of plaintiff's discovery of said fraudulent conspiracy, the true and actual value of said stock had increased to approximately One Thousand (\$1,000.00) Dollars per share, or a total

of \$781,250.00 for plaintiff's stock. That by reason thereof, plaintiff has been damaged in the sum of \$731,250.00.

### XXII.

No demand is made upon the defendant corporation to bring this action or upon the officers and directors thereof as they are defendants herein.

### XXIII.

Plaintiff hereby demands trial by jury of this action.

Wherefore, plaintiff prays for judgment against defendants, John R. Robinson, Ted R. Robinson, Laura R. McLeod, J. S. Robinson, A. W. V. Ford, W. E. Difford and Samuel P. McGhei, and against their respective marital communities, and against defendant corporation, Robinson Plywood and Timber Company (formerly known as the Robinson Manufacturing Company) in the sum of \$731,250.00, or such other sum as may be determined in this action, together with interest, and for plaintiff's costs and disbursements herein to be taxed. Plaintiff further prays for such other relief as to the Court may seem just, including exemplary damages.

SCARBOROUGH & HARRIS,  
METZGER, BLAIR, GARDNER  
& BOLDT,

/s/ GEO. H. BOLDT.

[Endorsed]: Filed April 19, 1951.

[Title of District Court and Cause.]

**MOTION TO DISMISS UNDER RULE 12 (b)**

Come now the defendants, John R. Robinson and Theta S. Robinson, his wife (impleaded herein as Jane Doe Robinson); Ted R. Robinson and Inez W. Robinson, his wife (impleaded herein as Jane Doe Robinson); J. S. Robinson and Carol Robinson, his wife (impleaded herein as Jane Doe Robinson; A. W. V. Ford and Myrtle Ford, his wife (im-pleaded herein as Jane Doe Ford), individually and as Officers and Directors of Robinson Plywood and Timber Company, a corporation; Samuel P. McGhie and Virginia McGhie, his wife (impleaded herein as Jane Doe McGhie), individually and as agents for the aforementioned defendants, and as agents for the Robinson Plywood and Timber Company; and Robinson Plywood and Timber Company, a corporation (formerly known as the Robinson Manufacturing Company), and move the Court as follows:

1. To dismiss the action under Rule 12 (b) (1) for lack of jurisdiction over the subject matter, it appearing upon the face of the Complaint that the action does not involve a controversy under the Constitution and laws of the United States, although purporting to do so:

(a) in that the transactions complained of did not involve a security traded in upon a securities exchange or upon an "over-the-counter" market and are, therefore, not within the purview of the Securities Exchange Act of

1934, which is set forth in the Complaint as the basis for jurisdiction; and

(b) in that the Securities Exchange Act of 1934 does not provide a civil right of action for the type of transactions alleged in the Complaint.

2. To dismiss the action under Rule 12 (b) (6) for failure of plaintiff to state a claim against any of said defendants upon which relief can be granted by this Court, on the ground that plaintiff has not brought herself or said cause of action within the purview of Section 10 of the Securities Exchange Act of 1934, and particularly in that she has not, pursuant to the requirements of said Section, alleged that the defendants, or any of them, have made use of any means or instrumentality of interstate commerce or of the mails or of any facility of any National Securities Exchange in connection with the use or employment of any manipulative or deceptive device in the acquisition of plaintiff's stock in contravention of said Section 10 or of any rules and regulations of the Securities and Exchange Commission adopted pursuant thereto.

#### Motion to Dismiss Under Rule 3

Said defendants further move the Court as follows:

1. To dismiss the action under Rule 3 for the reason that said action has not been commenced within the time limited by law.

#### Motion to Strike Under Rule 12 (f)

1. Said defendants further move to strike cer-

tain portions and paragraphs of plaintiff's Complaint under Rule 12 (f) as follows:

(a) to strike those portions of paragraph IX of plaintiff's Complaint relating to the alleged acquisition by defendants of Stock of Robinson Plywood and Timber Company (formerly Robinson Manufacturing Company) other than the Stock acquired from plaintiff, for the reason and upon the ground that said allegations are irrelevant and immaterial and have no valid relation to plaintiff's cause of action.

(b) to strike all of paragraph X of plaintiff's Complaint, with the exception of the first sentence thereof, for the reason and upon the ground that the matters therein set forth are not relevant or material to plaintiff's alleged cause of action, and relate to acts and events happening subsequent to the acquisition of plaintiff's Stock. Defendants particularly move to strike the last thirteen (13) lines of paragraph X on page 7 of plaintiff's Complaint reading as follows:

"That all of the minority stockholders, excepting only plaintiff, heretofore brought an action in the United States District Court for the Eastern District of Pennsylvania, being Cause No. 10322, against all of the defendants herein named, excepting only Samuel P. McGhie and Jane Doe McGhie, his wife, alleging the same fraudulent plan and conspiracy as herein set forth, and as a result of a compromise of said action, each and all of the other minority stockholders have been paid an addi-

tional \$110.00 per share for their stock in defendant corporation. That the total consideration per share realized by all other minority stockholders was \$430.00 per share, or 6.718 times more than the defendants paid to acquire the stock of plaintiff pursuant to the said fraudulent plan and conspiracy.”

for the reason that the matters therein set forth are not relevant or material to plaintiff’s alleged cause of action, and involve the compromise and settlement of a law suit between other persons not parties to this action, and are irrelevant, immaterial and incompetent.

(c) Defendants move the Court for an Order striking all of paragraphs XVIII and XIX, and each of said paragraphs, of plaintiff’s Complaint, for the reason and upon the ground that each and every of the allegations contained in said paragraphs, and each of them, are irrelevant and immaterial to plaintiff’s cause of action and relate solely to alleged overt acts, doings and representations of the defendants made and done subsequent to the acquisition of plaintiff’s stock.

O. D. ANDERSON, and

J. P. HUNTER,

By /s/ O. D. ANDERSON,

Attorneys for Moving  
Defendants.

Service of Copy acknowledged.

[Endorsed]: Filed May 10, 1951.

[Title of District Court and Cause.]

MOTION TO DISMISS UNDER RULE 12 (b)

Defendant W. E. Difford moves the court as follows:

1. To dismiss the action under Rule 12 (b) (1) for lack of jurisdiction over the subject matter, it appearing upon the face of the complaint that the action does not involve a controversy under the Constitution and laws of the United States, although purporting to do so:

(a) in that the transactions complained of did not involve a security traded in upon a securities exchange or upon an "over-the-counter" market and are therefore not within the purview of the Securities Exchange Act of 1934, which is set forth in the complaint as the basis for jurisdiction; and

(b) in that the Securities Exchange Act of 1934 does not provide a civil right of action for the type of transactions alleged in the complaint.

2. To dismiss the action under Rule 12 (b) (6) for failure of the plaintiff to state a claim against defendant, W. E. Difford, upon which relief can be granted by the court.

3. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted, in that it appears on the face of the complaint that the right of action set forth

did not accrue within two (2) years next before the commencement of this action.

Motion to Strike Under Rule 12 (f)

Defendant, W. E. Difford, moves the court as follows:

To strike from the plaintiff's complaint the following allegations on the ground that they are immaterial to the issues herein.

1. In the 7th and 8th lines of Paragraph 9 the words "and the other minority stockholders."
2. The sentence in the 12th, 13th, 14th and 15th lines of said Paragraph 9 reading as follows: "That the acquisition of plaintiff's stock as hereinafter related was the initial overt act in the execution of said fraudulent conspiracy."
3. In the 18th and 19th lines of said Paragraph 9 the words reading "and other minority stockholders of defendant corporation."
4. In the 20th line of said Paragraph 9 the word "minority."
5. All of Paragraph 10.
6. All of Paragraph 18.
7. All of Paragraph 19.

Due to the complexity of the issues raised by this motion, the defendant is not now serving and filing with this motion "a brief written statement of reasons in support of the motion and a list of citations

of the authorities on which he relies" under Rule 9 (b) of Local Rules of Civil Procedure of the United States District Court for the Western District of Washington, but will serve and file a brief in support of this motion prior to the hearing on this motion.

McMICKEN, RUPP &  
SCHWEPPPE,

/s/ ALFRED J. SCHWEPPPE,

/s/ M. A. MARQUIS,  
Attorneys for Defendant,  
W. E. Difford.

Service of the foregoing motion admitted at Tacoma, Washington, this 11th day of May, 1951.

METZGER, BLAIR, GARDNER  
& BOLDT,

GEO. H. BOLDT,

By /s/ B. L. E.,  
Of Counsel for Plaintiff.

[Endorsed]: Filed May 12, 1951.

[Title of District Court and Cause.]

MOTION TO DISMISS UNDER RULE 12 (b)

Defendants Laura R. McLeod and Loren McLeod, her husband, move the Court as follows:

1. To dismiss the action under Rule 12 (b) (1) for lack of jurisdiction over the subject matter, it appearing upon the face of the Complaint that the action does not involve a controversy under the Constitution and laws of the United States, although purporting to do so:

(a) in that the transactions complained of did not involve a security traded in upon a securities exchange or upon an "over-the-counter" market and are therefore not within the purview of the Securities Exchange Act of 1934, which is set forth in the complaint as the basis for jurisdiction; and

(b) in that the Securities Exchange Act of 1934 does not provide a civil right of action for the type of transactions alleged in the complaint.

2. To dismiss the action under Rule 12 (b) (1) for lack of jurisdiction over the subject matter in that it does not sufficiently appear in the complaint that acts and conduct complained of by Plaintiff involved the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national security exchange to bring the action within the purview of the Securities Exchange Act of 1934 set forth in the complaint as the basis for jurisdiction.

3. To dismiss the action under Rule 12 (b) (6) for failure of the Plaintiff to state a claim against Defendants, Laura R. McLeod and Loren McLeod, her husband, upon which relief can be granted by the Court in that it fails to sufficiently allege these Defendants' participation in or control over the acts and conduct complained of.

4. To dismiss the action because the complaint fails to state a claim against these Defendants upon which relief can be granted in that it appears on the face of the complaint that the action was not commenced in the time limited by law.

Motion for More Definite Statement  
Under Rule 12 (e)

Defendants Laura R. McLeod and Loren McLeod, her husband, move the Court as follows:

To move that the Plaintiff's Complaint and the statements made thereunder be made more definite.

1. As to Paragraph IV of the complaint, to set forth the date when Plaintiff ascertained the facts giving rise to the alleged cause of action and to set forth facts establishing her inability to discern the perpetration of the alleged fraud.

2. As to Paragraph XVI of the complaint, to set forth the amount of the Plaintiff's stock which these Defendants received as a result of the division therein referred to.

3. As to Paragraph XVII of the complaint, to set forth what amount in dollars is meant by the words "true value" in line 8 thereof.

## Motion to Strike Under Rule 12 (f)

Defendants Laura R. McLeod and Loren McLeod, her husband, move the Court as follows:

To strike from the Plaintiff's Complaint the following on the grounds that they are immaterial to the issues herein, and are redundant:

1. Paragraph V of the complaint.
2. Paragraph VII, line 11, page 5, to the end of the paragraph.
3. All reference to "other minority stockholders" in paragraphs IX, XI.
4. The third sentence of paragraph IX.
5. Paragraph X.
6. From paragraph XI, subparagraphs (d), (e), (f), and (g), the statements "and/or members of the Control Group" and "and other members of the Control Group."
7. Paragraph XVIII.
8. Paragraph XIX.
9. From the word "and" in line 5 of paragraph XXI to the end of paragraph.
10. Paragraph XXII.
11. From the prayer of the complaint, the words "including exemplary damages."

Due to the complexity of the issues raised by this Motion, the Defendants are not now serving and filing with this Motion "a brief written statement

of reasons in support of the motion and a list of citations of the authorities on which they rely" under Rule 9 (b) of Local Rules of Civil Procedure of the United States District Court for the Western District of Washington, but will serve and file a brief in support of this motion prior to the hearing on this motion.

TORBENSON & BAUM,

/s/ RICHARD M. THATCHER,

/s/ RAYMOND D. TORBENSON,

Attorneys for Defendants, Laura R. McLeod and  
Loren McLeod, Her Husband.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 9, 1951.

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[Title of District Court and Cause.]

MOTION OF SECURITIES AND EXCHANGE  
COMMISSION FOR LEAVE TO PARTICI-  
PATE AS AMICUS CURIAE AND NOTICE  
OF HEARING THEREON

The Securities and Exchange Commission hereby moves this Honorable Court for leave to participate as amicus curiae in the above-entitled matter with respect to questions of law concerning the proper construction of Rule X-10B-5, 17 C.F.R. § 240.10b-5, promulgated by the Commission pursuant to Section 10 (b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b).

Defendants' motions to dismiss the complaint, which is based on that rule, raises the following questions of statutory construction:

- (1) Does Section 10 (b) and Rule X-10B-5 apply to all securities transactions involving the use of the mails or instrumentalities of interstate commerce, or, as defendants contend, is the section and rule inapplicable to a transaction in a security not traded upon an exchange or in the over-the-counter markets maintained by professional securities brokers and dealers?
- (2) Does a violation of Rule X-10B-5 entitle a person who has been injured thereby to maintain a civil action for private recovery?
- (3) Are the uses of the mails which defendants allegedly made, or caused to be made, in connection with their purchase of plaintiff's securities, particularly mailings to effect payment for the securities and to obtain delivery of them, sufficient to provide jurisdiction under Rule X-10B-5?
- (4) What statute of limitations is applicable to a private action seeking damages for violation of Rule X-10B-5?

The foregoing questions are discussed in the attached brief in which the Commission's views are set forth.

The Commission has participated in many private lawsuits as amicus curiae. Its purpose in so participating is to assist courts in the interpretation of the federal securities statutes which are primarily

administered by the Commission. In a number of cases Commission participation resulted from court invitation and in all other cases of this type the courts have granted the Commission's motion for permission to participate.

The Commission, accordingly, respectfully requests that it be permitted to participate as amicus curiae in this action, and to file the attached brief and any additional briefs which may hereinafter be required for the above-stated purpose. In the event that the instant motion is granted, the Commission will file such additional copies of the attached brief as may be required by the Court.

Notice is hereby given that this motion shall come on for hearing before the above-entitled Court at the Federal Courthouse in Seattle, Washington, at 10:00 o'clock a.m. on July 2, 1951, or as soon thereafter as the matter may be heard by the Court.

Dated June 26, 1951.

Respectfully submitted,

/s/ ROGER S. FOSTER,  
General Counsel.

/s/ ALEXANDER COHEN,  
Special Counsel, Securities  
and Exchange Commission.

/s/ JAMES E. NEWTON,  
Attorney.

/s/ DONALD J. STOCKING,  
Attorney, Securities and  
Exchange Commission.

[Endorsed]: Filed June 26, 1951.

[Title of District Court and Cause.]

**ORDER ON MOTIONS TO STRIKE, MOTIONS  
TO MAKE MORE DEFINITE AND CER-  
TAIN, AND MOTIONS TO DISMISS**

This matter coming on for hearing in Open Court before the undersigned Judge thereof on the 31st day of July, 1951, upon the several motions of defendants to strike, make more definite and certain, and to dismiss, plaintiff appearing by and through her attorneys, Mr. Arthur Harris of the law firm of Scarborough and Harris of Philadelphia, Pennsylvania, and Mr. George H. Boldt of the law firm of Metzger, Blair, Gardner & Boldt of Tacoma, Washington; defendants Laura R. McLeod and John Doe McLeod, wife and husband, appearing by their attorney, Mr. Richard M. Thatcher of the law firm of Torbenson & Baum of Seattle, Washington; defendants W. E. Difford appearing by his attorney, Mr. M. A. Marquis of the law firm of McMicken, Rupp & Schweppe; and all other defendants appearing by and through their attorneys, Mr. O. D. Anderson and Mr. J. P. Hunter of Everett, Washington; the Securities Exchange Commission, amicus curiae, appearing by and through its attorney, Mr. Donald J. Stocking; and the several motions of defendants having been heard and argument having been had thereon, and the Court having examined the files and records herein, and the respective briefs and memorandums of authorities of the parties hereto, and being otherwise fully advised in the premises,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the several motions of all the defendants to strike certain portions and paragraphs of plaintiff's complaint under Rule 12 (f) of the Rules of Civil Procedure, which portions and paragraphs are hereinbelow set forth, to wit:

- (a) All of Paragraph X of plaintiff's complaint, with the exception of the first sentence thereof, and
- (b) All of Paragraphs XVIII and XIX, and each of said paragraphs of plaintiff's complaint,

upon the grounds and for the reasons that the allegations hereinabove described constituted pleadings of evidentiary matters is hereby granted, and said portions and paragraphs of plaintiff's complaint hereinabove set forth are hereby stricken, with the express reservation that such ruling be in no manner or respect whatever construed as a ruling on the admissibility of any evidence that may be offered at the trial relating to the subject matter of the allegations stricken, it being the intent of this ruling to leave decision upon the admissibility of all evidence, including that which may be offered relating to the subject matter of the allegations now stricken, to the judgment and decision of the court passing upon the pre-trial order or the court presiding at the trial of the cause, and

That a general allegation of conspiracy on the part of each and all of the defendants with respect of their acquisition of the minority stock of de-

fendant corporation, without particularity as to the details thereof, may be included in the complaint, and because of the position of defendants taken with relation thereto, shall not be subject to any motion to make more definite, to strike, or to dismiss, and

The plaintiff having conceded in her brief and in oral argument before the Court that the motion of the defendants, Laura R. McLeod and John Doe McLeod, her husband, to strike from the word "and" in line five (5) of Paragraph XXI to the end of the paragraph, and all of Paragraph XXII of the complaint, and from the prayer of the complaint the words "including exemplary damages" is hereby granted and said allegations herein referred to are stricken from the complaint, and

It Is Further Ordered, Adjudged and Decreed that all other motions to strike made on behalf of any or all of the defendants are denied, and

It Is Further Ordered, Adjudged and Decreed that all of the foregoing rulings may be complied with by plaintiff by interlineation and/or substitution of pages, and

It Is Further Ordered, Adjudged and Decreed that the several motions of all the defendants to dismiss the action under Rule 12 (b) (1) of the Rules of Civil Procedure for lack of jurisdiction over the subject matter, it appearing on the face of the complaint that there is no diversity of citizenship between the parties and that the action does not involve a controversy under the Constitution and laws of the United States, be and the same is

hereby granted upon the sole ground that the transactions complained of do not involve a security traded in or upon a securities exchange or upon an "over-the-counter" market and are therefore not within the purview of the Securities Exchange Act of 1934 which is set forth in the complaint as the basis of jurisdiction, and plaintiff's complaint and the cause or causes of action alleged therein are hereby dismissed with costs, and

It Is Further Ordered, Adjudged and Decreed that the several motions of all the defendants to dismiss under Rule 12 (b) (1) of the Rules of Civil Procedure on the ground that the Securities Exchange Act of 1934 does not provide a civil right of action for the type of action alleged in plaintiff's complaint is denied, and

It Is Further Ordered, Adjudged and Decreed that the several motions of all the defendants to dismiss under Rule 3 of the Rules of Civil Procedure on the ground that said action has not been commenced within the time limited by law is hereby denied.

Done in Open Court This 16th day of August, 1951.

/s/ J. FRANK McLAUGHLIN,  
United States District Judge.

Presented in Open Court and in the presence of all counsels concerned:

By /s/ GEO. H. BOLDT,  
Of Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed August 6, 1951.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the above-entitled Court and to each and all of the above-named defendants and their respective attorneys of record herein:

Notice Is Hereby Given that Idalia O. Fratt, a widow, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the below-quoted portion of the order and judgment of the Court made and entered in this action on August 6, 1951:

“It Is Further Ordered, Adjudged and Decreed that the several motions of all the defendants to dismiss the action under Rule 12 (b) (1) of the Rules of Civil Procedure for lack of jurisdiction over the subject matter, it appearing on the face of the complaint that there is no diversity of citizenship between the parties and that the action does not involve a controversy under the Constitution and laws of the United States, be and the same is hereby granted upon the sole ground that the transac-

tions complained of do not involve a security traded in or upon a securities exchange or upon an 'over-the-counter' market and are therefore not within the purview of the Securities Exchange Act of 1934 which is set forth in the complaint as the basis of jurisdiction, and plaintiff's complaint and the cause or causes of action alleged therein are hereby dismissed with costs, \* \* \*,

SCARBOROUGH & HARRIS,  
METZGER, BLAIR, GARDNER  
& BOLDT,

/s/ GEO. H. BOLDT,  
Attorneys for Plaintiff.

[Endorsed]: Filed August 28, 1951.

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT, TO RECORD ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision I of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75 (o) of the Federal Rules of Civil Procedure, I am transmitting herewith all of

the original papers in the file dealing with the above-entitled action, and that the same constitute the complete record on file in said cause, and that said papers constitute the record on appeal from the judgment and order dated August 6th, 1951, to the United States Court of Appeals for the Ninth Circuit, and are identified as follows:

1. Complaint, filed Apr. 19, 1951.
2. Summons with Marshal's Returns thereon, filed Apr. 26, 1951.
3. Appearance of Raymond D. Torbenson and Richard M. Thatcher for defendants Laura R. McLeod, et ux., filed May 10, 1951.
4. Motion to Dismiss under Rule 12 (b) of defendants John R. Robinson, et al., filed May 10, 1951.
5. Motion to Dismiss under Rule 12 (b) of defendant W. E. Difford, filed May 12, 1951.
6. Motion to Dismiss under Rule 12 (b) of defendant Laura R. McLeod, et vir., filed Jun. 9, 1951.
7. Notices of hearing on Motions to Dismiss, filed Jun. 18, 1951.
8. Brief of Defendant W. E. Difford in Support of Motion to Dismiss and Motion to Strike, filed Jun. 26, 1951.
9. Motion of Securities and Exchange Commission for Leave to Participate as Amicus Curiae and Notice of Hearing Thereon, filed Jun. 26, 1951.
10. Brief for the Securities and Exchange Commission, Amicus Curiae, sur Motions to Dismiss Complaint, filed Jun. 26, 1951.

11. Brief of Defendants Laura McLeod, et vir., in Support of Their Motion to Dismiss Under Rule 12 (b); Their Motion for More Definite Statement, and Their Motion to Strike Under Rule 12 (f), filed Jun. 27, 1951.

12. Acknowledgment of Service of Brief of Defendant Difford by Metzger, Blair, Gardner & Boldt, filed Jun. 27, 1951.

13. Brief of Defendants John R. Robinson, et al., in Support of Their Motion to Dismiss, and Motion to Strike, filed Jul. 2, 1951.

14. Plaintiff's Memorandum of Authorities on Defendants' Motions to Dismiss, Strike and Make More Definite, filed Jul. 26, 1951.

15. Order granting motion of Securities and Exchange Commission to participate amicus curiae in the cause, filed Jul. 31, 1951.

16. Order on Motions to Strike, Motions to Make More Definite and Certain, and Motions to Dismiss, filed Aug. 6, 1951, by Judge McLaughlin.

17. Notice of Appeal of Plaintiff, filed Aug. 28, 1951.

18. Bond for Costs on Appeal (\$250.00), by Gen. Cas. Co. of America, filed Aug. 28, 1951.

19. Designation of Contents of Record on Appeal, filed Aug. 31, 1951.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparation of the record on appeal herein on behalf of plaintiff, to wit:

Filing fee, notice of appeal, \$5.00; and that said amount has been paid to me by the attorneys for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 21st day of September, 1951.

MILLARD P. THOMAS,  
Clerk.

[Seal] By /s/ TRUMAN EGGER,  
Chief Deputy.

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[Endorsed]: No. 13111. United States Court of Appeals for the Ninth Circuit. Idalia O. Fratt, Appellant, vs. John R. Robinson and Jane Doe Robinson, Husband and Wife, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed September 24, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13111

IDALIA O. FRATT, a Widow,

Appellant,

vs.

JOHN R. ROBINSON and JANE DOE ROBINSON, Husband and Wife; TED R. ROBINSON and JANE DOE ROBINSON, Husband and Wife; LAURA R. McLEOD and JOHN DOE McLEOD, Wife and Husband; J. S. ROBINSON and JANE DOE ROBINSON, Husband and Wife; and A. W. V. FORD and JANE DOE FORD, Husband and Wife, Individually and as Officers and Directors of Robinson Plywood and Timber Company, a Corporation; W. E. DIFFORD and JANE DOE DIFFORD, Husband and Wife; and SAMUEL P. McGHEI and JANE DOE McGHEI, Husband and Wife, Individually and as Agents for the Aforementioned Defendants, and as Agents for the Robinson Plywood and Timber Company; and the ROBINSON PLYWOOD AND TIMBER COMPANY, a Corporation (Formerly Known as the Robinson Manufacturing Company),

Respondents.

STATEMENT OF POINTS ON WHICH  
APPELLANT WILL RELY ON THE APPEAL

The portion of the order and judgment of the

District Court appealed from, dismissed plaintiff's action on the ground that the security transactions complained of in the complaint were not within the purview of the Securities Exchange Act of 1934. In this appeal, appellant will contend that under the allegations of the complaint the transactions complained of were within the purview of Section 10 (b) of the Securities Exchange Act of 1934, and that accordingly, the District Court had jurisdiction to entertain the action.

SCARBOROUGH & HARRIS,  
METZGER, BLAIR, GARDNER  
& BOLDT,

/s/ GEO. H. BOLDT,  
Attorneys for Appellant.

[Endorsed]: Filed September 28, 1951.

[Title of Court of Appeals and Cause.]

### DESIGNATION OF RECORD

To the Clerk of the above-entitled court and to each and all of the above-named defendants and their respective attorneys of record herein:

Appellant above named hereby designates the following portions of the record and proceedings as necessary for consideration of the points on which appellant will rely on the appeal:

1. The Complaint.
2. The several motions of defendants.
3. The order and judgment of the Court made and entered herein on August 6, 1951.
4. The Notice of Appeal.
5. Certificate of Clerk.

Dated this 27th day of September, 1951.

SCARBOROUGH & HARRIS,  
METZGER, BLAIR, GARDNER  
& BOLDT,

/s/ GEO. H. BOLDT,  
Attorneys for Appellant.

[Endorsed]: Filed September 28, 1951.

